

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No. 6490 of 2015 (O&M)
Date of Decision: August 02, 2017**

Ravinder

..Appellant(s)

Versus

Ramesh Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vikram Bali, Advocate
for the appellant.

Mrs. Vandana Malhotra, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

This is the claimant's appeal seeking enhancement in the award dated 03.04.2015, passed by the Motor Accident Claims Tribunal, Chandigarh.

Ravinder was stated to be 20 years old and was working as a carpenter and was earning Rs.10,000/- per month. It was pleaded that the accident occurred on 06.07.2012 he went into coma and was operated upon and remained bed ridden till the filing of the petition. There was a head injury. It was also claimed that a sum of Rs.70,000/- was spent on the treatment and he had suffered permanent disability.

The claimant had examined Dr. Manoj Kumar who deposed that there was significant impairment in the memory but the overall intelligence was 67% which suggested mild level of disability

in the intellect and he could not behave in a normal way. Dr. Tenzim PW-3 stated that there was injury on the left frontal bone and the claimant remained admitted in the hospital initially for three days in July 2012 and in February 2013 for 12 days and he would require bone replacement that would cost him Rs.12,000/-.

Dr. Manoj Kumar proved the disability certificate Ex.C80 and stated that the disability suffered was mental disability and it was moderate disability of 40 to 70% and he would not be able to carry out his daily routine activities without assistance and cannot do any vocational work independently and he would not be able to communicate relevantly or behave or act like a normal person.

The medical bills produced on record were to the tune of Rs.2,13,174/- and the Tribunal applied the multiplier method and took the income to be Rs.6,000/- per month and taking the disability at 60% calculated the amount of disability to be Rs.7,77,600/-. Rs.1 lac was allowed for pain and suffering, Rs.40,000/- was allowed for special diet and Rs.20,000/- was allowed for future expenses.

The submission on behalf of the appellant is that the claimant is disabled for life and considering the injury the calculation should have been made taking the disability to be 100%. The counsel further submits that the amount allowed for the pain and suffering is less and the claimant would have to utilize the services of attendant for the rest of his life. The counsel further submits that some addition should be made for future prospects. Counsel further submits that the

claimant would not be able to get married and therefore, some amount should have been allowed for loss of marriage prospects.

The submission on behalf of the respondent is that the Tribunal has used a higher multiplier when the age in the medical record is 28. The counsel submits that the claimant had appeared in the witness box and had filed an affidavit and he was subjected to cross-examination and he was able to respond to all the questions and he had admitted that he had come without the support of crutches or a stick and had climbed the stairs without any support and was physically fit. The counsel submits that in such circumstances the attendant would not be required and the Tribunal had already allowed attendant charges for a period of 9 months. The counsel further submits that there was no evidence that he was earning and the Tribunal has already taken a higher amount to calculate the amount for the disability and there can be no addition towards future prospects as the matter is under consideration with the Larger Bench.

The medical record shows that the injured was 28 years old. He had undergone surgery of the brain and the treatment was long. The accident had taken place in July 2012 and the visits to the hospital continued and the medicines were being purchased even till middle of 2014. The Medical Officer had spoken about the disability and it had also been stated that the disability was permanent and it would be difficult for patient to engage in any vocation or job independently and the percentage of disability was described to

ranging between 40 to 70% based on the Disability Evaluation and assessment procedure gazetted by the Government of India.

The Tribunal had taken the disability at 60% while the income was taken to be Rs.6,000/- per month. There was no evidence with respect to vocation though it was stated that he was working as a carpenter prior to the accident. The claim petition had been filed through the father but the claimant did appear and make a statement and was able to withstand the cross-examination. The claimant had walked to the Court without any crutches or assistance, therefore, there is no physical disability. The disability is with respect to the brain and the Medical Officers had stated that he would not be independently able to take up any vocation. The disability was stated to be moderate.

The minimum wages in 2012 stood around Rs.5,000/- per month. For the skilled worker it can be taken as Rs.5,200/- per month and the disability is taken at 70% instead of 60% and the amount for the disability would be $\text{Rs.}3640/- \times 12 \times 17 = \text{Rs.}7,42,560/-$. The compensation payable would be as under:-

Compensation on account of disability	Rs.7,42,560/-
Compensation on account of pain & suffering	Rs.2,00,000/-
Compensation on account of special diet	Rs.50,000/-
Compensation on account of transportation	Rs.25,000/-
Compensation on account of attendant charges	Rs.50,000/-
Compensation on account of future medical expenses	Rs.1,00,000/-
Compensation on account of actual amount spent on purchase of medicines and treatment	Rs.2,13,174/-
Compensation on account of loss of marriage prospects	Rs.1,00,000/-
TOTAL	Rs.14,80,734/-

The Tribunal had allowed Rs.11,97,774/-, which would be deducted and the remaining amount would be paid within two months, failing which the insurance company will pay the balance amount with interest @ 6% from September 2015 till realization. The insurance company will have the right to recover the amount from driver-owner as ordered by the Tribunal.

The appeal is partly allowed.

August 02, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No